

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NORTH CAROLINA  
SOUTHERN DIVISION

NO.: 7:15-CR-104-1H

NO.: 7:19-CV-131-H

LEXY LEONEL HERRERA-PAGOADA,

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Petitioner,

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v.

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**ORDER**

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UNITED STATES OF AMERICA,

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Respondent.

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This matter is before the court on petitioner's motion to obtain a certificate of appealability filed January 29, 2020, [DE #86]. At petitioner's supervised release revocation hearing on January 15, 2020, petitioner's counsel orally moved this court to reconsider its denial of a certificate of appealability in its ruling on the § 2255 motion. The court instructed counsel to file a written motion. Therefore, this motion is construed by the court as a motion to reconsider the court's denial of the certificate of appealability of the dismissal of petitioner's § 2255 motion.

A certificate of appealability shall not issue absent "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). A petitioner satisfies this standard by demonstrating that reasonable jurists would find that an

assessment of the constitutional claims is debatable and that any dispositive procedural ruling dismissing such claims is likewise debatable. Miller-El v. Cockrell, 537 U.S. 322, 336-38 (2003); Slack v. McDaniel, 529 U.S. 473, 484 (2000); Rose v. Lee, 252 F.3d 676, 683-84 (4th Cir. 2001) (citing Slack, 529 U.S. at 484).

The court hereby reconsiders its prior denial, and considering all the circumstances herein, including that this is an issue of first impression in the Fourth Circuit, a reasonable jurist could find this court's dismissal of petitioner's § 2255 motion debatable. Therefore, the court grants the motion, [DE #86], and a certificate of appealability shall issue.

This 3rd day of February 2020.

  
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Malcolm J. Howard  
Senior United States District Judge

At Greenville, NC  
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